

Private foundation; qualifying distributions; legal fees. Legal fees not excessive in amount, paid by an exempt charitable trust in a suit to determine the proper beneficiary of a portion of its net income, are qualifying distributions under section 4942(g)(1) of the Code.

Advice has been requested whether, under the circumstances described below, legal fees paid by a charitable trust are qualifying distributions for purposes of section 4942(g)(1) of the Internal Revenue Code of 1954.

A trust, which is exempt under section 501(c)(3) of the Code and is a private foundation under section 509(a), was established, in part, to pay a certain percentage of its net income to literary society X so long as X, as an integral part of its operations, promotes the writings of William Shakespeare. The trust instrument provides that if X fails to promote the works of Shakespeare, the trustee is to make distributions to College Y.

The trust for many years distributed a certain percentage of its net income to X. As the trustee was about to distribute this percentage of 1973 net income to X, College Y objected, claiming that X was not actively promoting Shakespeare's works and, therefore, College Y was entitled to the income distribution.

The trustee then advised Y that, in his judgment, X was still entitled to the distribution. Nevertheless, Y brought suit in order to obtain a court order designating the proper beneficiary. As a result of this litigation, the trust sustained a legal bill that was not excessive in amount.

Section 4942(g)(1) of the Code provides, in part, that the term 'qualifying distribution' means any amount (including administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B).

Section 53.4942(a)-(3)(a)(2)(i) of the Foundation Excise Tax Regulations requires that the administrative expenses be 'reasonable and necessary.'

The payment of legal fees in a suit to determine the proper distributee of a charitable trust is a reasonable and necessary expense to accomplish the trust's exempt purpose. Therefore, such payment is an administrative expense paid to accomplish a section 170(c)(2)(B) purpose and, accordingly, a qualifying distribution under section 4942(g)(1) of the Code in the year payment was made.